

1 LAW OFFICES OF DEBORAH L. RAYMOND
2 Deborah L. Raymond, SBN 173528
3 445 Marine View Avenue, Suite 305
Del Mar, CA 92014
(858) 481-9559

4 Attorney For Plaintiffs, TIMOTHY LOSACCO and FLORENCE LOSACCO

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 TIMOTHY LOSACCO, an individual;
11 FLORENCE LOSACCO, an individual,

12 Plaintiffs,

13 vs.

14 FREMONT INVESTMENT & LOAN, a
15 California corporation; and DOES 1-10,
inclusive,

16 Defendant(s).

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20 Case No. 08cv0810JM (POR)

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**DECLARATION OF PLAINTIFF
TIMOTHY LOSACCO IN SUPPORT OF
PLAINTIFFS' APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

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30 I, TIMOTHY LOSACCO hereby declare:

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32 1. I am a Plaintiff in the above entitled action.
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34 2. I have personal knowledge of all things stated in this declaration except as to those
things stated on information and belief, and as to those things, I believe them to be true. I could testify
35 competently to these things if called to as a witness in court.

36
37 3. On July 17, 2006, I signed paperwork for a loan to refinance my principle

1 dwelling/residence located at 804 Begonia Street, Escondido, California 92027 ("My residence"). I
2 signed several documents including but not limited to a note with Fremont Investment & Loan in the
3 amount of Four Hundred Thirty Two Thousand Nine Hundred Dollars (\$432,900.00) (the "loan"),
4 which was secured by a first deed of trust on my residence. The money received from the loan was
5 used primarily for personal, family and household purposes, including amongst other things, to payoff
6 an existing loan secured by my residence and other consumer debt.

7 4. On July 17, 2006, during the course of the transaction, both myself and my wife,
8 Florence Losacco signed several documents. The documents we signed were taken by the notary
9 public that came to our home, and my wife and I were provided with a packet of documents (the
10 "packet of documents"). We were told by the notary public that the packet of documents were copies
11 of the documents that we had just signed. The packet of documents were the only documents relating
12 to the loan that I received on July 17, 2006.

14 5. Within the packet of documents, my wife and I received six copies of the Notice of
15 Right to Cancel stating that the date of the transaction was July 14, 2006, and with a blank line and
16 no date of expiration for the cancellation period. A copy of the six Notices of Right to Cancel that my
17 wife and I received are herein attached and incorporated by reference as Exhibits "A-1", "A-2", "A-3",
18 "A-4", "A-5" and "A-6". I did not nor have I ever received two copies of the Notice of Right to
19 Cancel containing the date of expiration of the cancellation period for the loan.

21 6. On January 29, 2008, I went to the U.S. Post Office and picked up a Notice of
22 Default. A copy of the Notice of Default that I picked up is herein attached and incorporated by
23 reference as Exhibit "B".

24 7. On March 5, 2008, I signed a statement of my wish to cancel the loan transaction.
25 A copy of my rescission notice is herein attached and incorporated by reference as Exhibit "C". I am
26

1 informed and believe and thereon state that despite the fact that Defendant Fremont had received my
 2 notice of rescission, a Notice of Trustee's Sale was recorded against my residence. The Notice of
 3 Trustee's Sale states that a sale date for my residence is scheduled for May 15, 2008. A copy of part
 4 of the Notice of Trustee's Sale is herein attached and incorporated by reference as Exhibit "D".
 5

6 8. I do not want to lose my home. If Defendant Fremont sells my home through
 7 foreclosure, I believe that my home will be lost to me and my wife forever. My home is unique and
 8 my wife and I have made it a comfortable place to live and it meets our needs. I do not believe that
 9 we will be able to purchase the exact same home anywhere else. I have lived in my home for 10 years.
 10 If Defendant Fremont is permitted to foreclose and I am forced to leave my home, it will subject me
 11 to humiliation and loss of reputation in my community and among my family, and friends.

12 9. I respectfully request that the Court preserve the status quo and grant our request
 13 for a Temporary Restraining Order and then, a preliminary injunction to prevent Defendant Fremont
 14 from foreclosing and selling my home before our claims are heard by the Court.

15 I declare under penalty of perjury that the foregoing is true and correct to the best of
 16 my knowledge. Executed this 8th day of May 2008, at Escondido, California.
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TIMOTHY LOSACCO

NOTICE OF RIGHT TO CANCEL

LENDER: Fremont Investment & Loan

DATE 07/14/2006
LOAN NO. 30000000221234
TYPE Conventional

BORROWERS/OWNERS TIMOTHY LOSACCO

ADDRESS 804 BEGONIA ST
CITY/STATE/ZIP Escondido, CA 92027
PROPERTY 804 BEGONIA ST, Escondido, CA 92027

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage/lien/security interest on/in your home. You have a legal right under federal law to cancel this transaction, without cost, within THREE BUSINESS DAYS from whichever of the following events occurs last:

(1) The date of the transaction, which is July 14, 2006
or
(2) The date you received your Truth in Lending disclosures;
or
(3) The date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage/lien/security interest is also cancelled. Within 20 CALENDAR DAYS after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage/lien/security interest on/in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 CALENDAR DAYS of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at:

Fremont Investment & Loan
1065 N. Pacificenter Drive, Anaheim, CA 92806
Funding Dept. Attn: Funding Manager

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than MIDNIGHT of
(or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events listed
above.) If you send or deliver your written notice to cancel some other way, it must be delivered to the above
address no later than that time.

I WISH TO CANCEL

SIGNATURE

DATE

I/We received Two (2) copies of the Notice of Right to Cancel this Date 20

BORROWER/OWNER TIMOTHY LOSACCO

NOTICE OF RIGHT TO CANCEL

LENDER: Fremont Investment & Loan

DATE 07/14/2006
LOAN NO. 30000000221234
TYPE Conventional

BORROWERS/OWNERS FLORENCE LOSACCO

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BORROWER/OWNER FLORENCE LOSACCO

IMPORTANT INFORMATION – PLEASE READ FIRST

You are being provided this notice because of a search of the public record or from information provided by our client.

To obtain a payoff / reinstatement statement or to cure the default you will need to contact our office. In order to assist you please use the contact information noted below.

Contact information



Email requests: support@trusteeecorps.com
Facsimile requests: (949) 252-8330
Written requests: Trustee Corps (Foreclosure Department)
30 Corporate Park
Suite 400
Irvine, CA 92606



On all Request

TAKE NOTE

Please include: The information Your Requesting
Your Name
Your Mailing Address
Your Phone Number
Your Loan Number
Our File Number
Your relationship to the property in foreclosure
(Example: property owner, junior lien holder, escrow company, etc.)

Please make your request as soon as possible.
Information will be made available only to those authorized to obtain the information.

In compliance with the Fair Debt Collection Practices Act, the enclosed notice(s) is(are)being provided. We are attempting to collect a debt and any information we obtain will be used for that purpose. The debt being collected is assumed to be valid unless debtor disputes within 30 days. If disputed, debt collector will obtain and furnish to debtor verification of the debt. If written request is made within 30 days by debtor, the name of the original lender will be given if different than current. The amount of the debt is contained on the enclosed notice. The name of the creditor is contained on the enclosed notice.

To obtain this information please contact: TRUSTEE CORPS 30 CORPORATE PARK, IRVINE, CA 92606. With your request please include; Your name, Your Mailing Address, Your Phone Number, Your Loan number, and Our File Number. If you should have any questions, please feel free to contact our office during our normal business hours of 8:00 am to 5:00 pm Pacific Time. Our phone number is (949) 252-8300.

EXHIBIT "B"

Recording Requested
By Southland Title

[RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:]

Trustee Corps
2112 Business Center Drive,
2nd floor
Irvine, CA 92612

DOC # 2008-0030629



JAN 23, 2008 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 14.00

DA 1

PAGES: 2

1077



[Space above this line for recorder's use only]

Trustee Sale No. CA0816236 Loan No. 3000221234 Title Order No. 30110309

IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER
DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **\$19,641.65** as of **01/22/2008** and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagor may insist that you do so in order to reinstate your account in good standing. In addition, the Beneficiary or Mortgagor may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagor will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Beneficiary or Mortgagor may mutually agree in writing prior to the time the Notice of Trustee's Sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of property by paying the entire amount demanded by your creditor.

1078

Trustee Sale No. CA0816236 Loan No. 3000221234 Title Order No. 30110309
 ATO CONTROL NO. 34253A24R222

To find out the amount you must pay, to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR FREMONT INVESTMENT & LOAN
 c/o TRUSTEE CORPS
 2112 BUSINESS CENTER DRIVE
 2ND FLOOR
 IRVINE, CA 92612
 (949) 252-8300

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

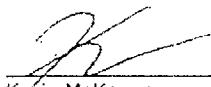
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT: MTC FINANCIAL, INC. dba TRUSTEE CORPS is the original Trustee, duly appointed Substituted Trustee, or acting as Agent for the Trustee or Beneficiary under a Deed of Trust dated 07/14/2006, executed by TIMOTHY LOSACCO AND FLORENCE LOSACCO, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, to secure obligations in favor of FREMONT INVESTMENT & LOAN the original Lender and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., A SEPARATE CORPORATION, ACTING SOLELY AS NOMINEE FOR LENDER AND LENDER'S SUCCESSORS AND ASSIGNS, the original Beneficiary Recorded on 07/21/2006 as Document No. 2006-0516198 of official records in the Office of the Recorder of San Diego County, California, as more fully described on said Deed of Trust. Including a Note(s) for the sum of \$432,900.00 that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 09/01/2007 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST, ALONG WITH LATE CHARGES, PLUS FORECLOSURE COSTS AND LEGAL FEES.

That by reason thereof, the present Beneficiary under such Deed of Trust, has executed and delivered to TRUSTEE CORPS, said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED: 1/22/08

TRUSTEE CORPS, as Agent for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR FREMONT INVESTMENT & LOAN
 BY: LandAmerica Default Services, as Agent
 Authorized Signatory



Kevin McKenna

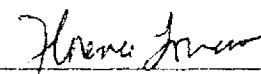
TRUSTEE CORPS IS A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

**WE HEREBY RESCIND/CANCEL THE LOAN TRANSACTION RELATING TO
FREMONT INVESTMENT & LOAN REAL ESTATE LOAN NUMBER 3000221234. A
signed photocopy, PDF, or facsimile of this Rescission/Cancellation shall have the same force
and/or effect as a signed original.**

Dated: 2-29-08


Timothy Losacco

Dated: 2/29/08


Florence Losacco

(RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO.)

Trustee Corps
2112 Business Center Drive,
2nd floor – Suite 201
Irvine, CA 92612

(Space above this line for recorder's use only)

Trustee Sale # CA0816236 Loan# 3000221234 Order # 30110309

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 07/14/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 05/15/2008 at 10:00AM, MTC FINANCIAL INC., dba TRUSTEE CORPS as the duly appointed Substituted Trustee under and pursuant to Deed of Trust Recorded on 07/21/2006 as Document No. 2006-0516198 of official records in the Office of the Recorder of San Diego County, CALIFORNIA, executed by, TIMOTHY LOSACCO AND FLORENCE LOSACCO, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, FREMONT INVESTMENT & LOAN, as Beneficiary.

WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH (payable at time of sale in lawful money of the United States, by cash a cashier's check drawn by a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state). AT: THE ENTRANCE TO THE EAST COUNTY REGIONAL CENTER BY STATUE 250 E. MAIN STREET EL CAJON, CA

The property heretofore described is being sold "as is". All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State describing the land therein. APN # 225-283-21-00

LOT 2, BLOCK 11, ESCONDIDO PLAZA UNIT NO. 6, IN THE CITY ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 4318, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 26, 1959.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY, AS PROVIDED IN DEEDS OF RECORD.

The street address and other common designation, if any, of the real property described above is purported to be:

804 BEGONIA ST, ESCONDIDO, CA 92027

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the Note(s) secured by said Deed of Trust, with interest thereon, as provided in said Note(s), advances, if any, under the terms of the Deed of Trust, estimated fees, charges and expenses of the Trustee and of the trustee created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Trustee's Sale is **\$465,068.48 (estimated amount)**. Accrued interest and additional advances, if any, will increase this figure prior to sale.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive

EXHIBIT "D"